matter of suits between states. Questions of boundaries have formed the most common disputes before the United States courts. *Rhode Island* v. *Massachusetts*, 12 Pet. 657. It has been held, however, that no private citizen can use the name of his state to enforce a private claim against another state. *New Hampshire* v. *Louisiana*, 108 U. S. 76.

In this connection a recent decision by the Supreme Court is of interest. The State of Missouri, fearing that the operation of a drainage canal built by the State of Illinois would be injurious to the inhabitants of Missouri, filed a bill before the Supreme Court to enjoin such a use of the canal. The State of Illinois demurred, claiming that the State of Missouri was only nominally a party, and as the real parties plaintiff were the riparian proprietors on the Mississippi River, the action was contrary to the Eleventh Amendment. The court held, however, that it was an injury to the state as such, and overruled the demurrer. *Missouri* v. *Illinois*, 21 Sup. Ct. Rep. 331.

In view of the fact that the Mississippi River is a navigable stream, the decision seems clearly right. The bed of the stream is owned by the state, and is held for the benefit of the public generally. But as in the case of a park or a highway, the state is the legal owner of the fee. When, therefore, an act is done which diminishes the value of the river, the state is directly injured as a state, and it is the proper plaintiff in an action to abate the nuisance. The nuisance here is such that, if done within the state by a private citizen, the attorney-general would be the proper official to proceed in behalf of the state. This fact suggests a satisfactory standard of judging where to draw the line. Whenever the act is one which, done by a private citizen, calls for the interference of the attorney-general, then such an act, done by a state, may be the basis of an interstate dispute sufficient to give the federal courts jurisdiction. This test would doubtless be good as far as property rights of a state or rights as sovereign are infringed. It may, however, be objected that the people as such are sometimes injured when the state as a state is not affected, and that in such cases the attorney-general proceeds in behalf of the public generally. As, for instance, where a public corporation, acting in excess of its chartered powers, gains such a monopoly in trade as to threaten the public interests. *Attorney-General* v. *Great Northern R. R.*, 1 Drewry & Smale, 154. A careful examination of the attorney-general's authority, however, shows that in such cases, he does not directly represent the public, but acts as agent of the sovereign, who, as *parens patriæ*, is the proper one to guard such interests. Although the action is in the name of the attorney-general, the state in reality is the interested party. *Jackson* v. *Phillips*, 14 Allen, 539. This being so, the rule suggested seems both safe and practicable.

RIGHTS IN PUBLIC PONDS. — Although comparatively little has as yet been written about the law of ponds, the decisions are hopelessly confused. This is largely due to the fact that, while the tests applied in the law of watercourses are too narrow to be applied to ponds, the courts have tried to carry them over. As an instance of this confusion, in England, it is held that the public have no rights whatever in ponds, while, on the other hand, in Massachusetts, it is said that all large ponds belong to the public, and littoral owners have no property rights in them

Bristow v. *Cormican*, 3 App. Cases, 641; *Wattuppa Co.* v. *Fall River*, 147 Mass. 548. Both these positions, however, are extreme, and neither represents the prevailing American doctrine. It may be doubted whether it is safe to say that there is a common doctrine, because in each jurisdiction the development is in some respects peculiar. But as far as large navigable ponds are concerned, almost all agree that the public have many rights in them similar to those they enjoy in navigable rivers. Gould on Waters, 3d ed., § 82. Some interesting questions concerning these rights of littoral owners and the public were raised in a recent Minnesota case. The defendant, for commercial purposes, cut a large amount of ice; as a result the natural level of a public pond was lowered, causing substantial damage to the littoral owners. The court held that while the public had a right to cut ice on public ponds, yet this right was in each instance personal, and to take so large an amount for the purposes of sale was an unreasonable exercise of the right. *Sanborn* v. *People's Ice Co.*, 84 N. W. Rep. 641.

The right of a littoral owner was of course involved, and the decision of the court that he has special property rights seems commendable and timely. In dealing with rights which are peculiarly public, such as the right to fish or to navigate, it is often said that a shore owner on a pond has no greater right than any other member of the public. *Brastow* v. *Rockport Ice Co.*, 77 Me. 100. In each actual case the statement is doubtless true, but its form is too broad and sweeping. There are of course fewer opportunities to injure a shore owner on a pond than on a river, and the incidents of such ownership are less valuable in the case of a pond. But there are certain well-defined incidents of littoral ownership on a pond which it is only just to allow the proprietor to hold as property. Such incidents are the rights of access, to accretion, and to have the water remain in its natural state subject only to reasonable use by others; and as far as these are concerned there is no reason why the law should not treat the littoral as well as it does the more fortunate river-bank owner. 3 HARVARD LAW REVIEW, 1.

The distinction which the court makes between a taking for personal use and for commercial purposes may, however, well be doubted. This right to cut ice is public, and is very similar to the right to fish; in fact, it is only another application of the common right to the beneficial use of the pond. Doubtless no one would contend that the right to take fish from public waters is personal, and it is hard to distinguish between that and the right to cut ice. Moreover, no authority for the distinction has been found. But it has often been held that there are limits to this public right. Water cannot be taken from a pond by artificial means so as to injure a riparian owner on an outlet stream. *Concord Mfg. Co.* v. *Robertson*, 66 N. H. 1. But no satisfactory test has been given to determine what is a reasonable use. If it were a case of taking water from a navigable stream by a member of the public, doubtless he would be restricted to the same amount as is allowed a riparian owner for other than domestic uses; that is, to such an amount as shall not perceptibly diminish the flow. Drawing an analogy from this, it is suggested that it might be well to limit the public to such a use as shall not injure or diminish the pond as a pond, and that any use resulting in perceptible diminution is both unreasonable and unlawful.